

AMENDED IN SENATE APRIL 14, 2011

**SENATE BILL**

**No. 734**

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**Introduced by Senator Price**  
(Coauthor: Assembly Member Galgiani)

February 18, 2011

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An act to ~~amend Section 14838.1 of the Government Code~~ *add Section 185034.1 of the Public Utilities Code*, relating to small business.

LEGISLATIVE COUNSEL'S DIGEST

SB 734, as amended, Price. *High-Speed Rail Authority: Small business participation goals. program: bidding preferences.*

Existing law provides for various programs to encourage the participation of small businesses, as certified by the Department of General Services, in state agency contracts, and sets forth the duties of the Director of General Services and the directors of other state agencies in this regard.

~~Existing law, in order to encourage the participation of small businesses in the construction of the state's infrastructure, as provided in specified infrastructure-related bond acts of 2006, requires each state agency, as defined, to establish a 25% goal for the participation of small businesses in the construction of the state's infrastructure, as provided in those bond acts, to advertise all upcoming opportunities to bid on contracts for projects funded by those bond acts, as specified, including bidding procedures, and to provide California small businesses with information regarding available training and technical assistance for understanding and bidding on contracts for projects funded by those bond acts.~~

~~Existing law also requires each state agency that has awarded any contract financed with the proceeds of the infrastructure-related bond~~

~~acts in the previous fiscal year to report to the Director of General Services on an annual basis on certain statistics regarding small business and microbusiness participation.~~

Existing law, the California High-Speed Rail Act, creates the High-Speed Rail Authority to develop and implement a high-speed rail system in the state, with specified powers and duties. Existing law, pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related purposes.

~~This bill would extend the application of the above-referenced small business participation goals and reporting provisions to the High-Speed Rail Authority relative to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century require the authority to identify essential components of, and adopt, a small business program as part of contracts to be awarded by the authority relative to development and construction of the high-speed rail system. The bill would require the authority to provide certain bidding preferences and to establish a goal methodology to determine the appropriate level of involvement of small businesses in authority contracts. The bill would require at least one public hearing by the authority before the program is adopted and would require the authority to include a plan for outreach to small businesses.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares all of the*
- 2     *following:*
- 3     (a) *In order to keep faith with the promise to promote California*
- 4     *jobs, following the passage of the Safe, Reliable, High-Speed*
- 5     *Passenger Train Bond Act for the 21st Century, the state should*
- 6     *aid, counsel, assist, and protect, to the maximum extent possible,*
- 7     *the interests of small businesses, including microbusinesses.*
- 8     (b) *California's microbusinesses are known to bring real*
- 9     *diversity to local economies and the state and deserve a fair share*
- 10    *of contracts awarded for the high-speed rail project. Although*
- 11    *microbusinesses comprise over 80 percent of California's certified*

1 *small businesses, and while it was the state's intent to afford*  
 2 *microbusinesses the same opportunities as other small businesses*  
 3 *in competing for state contracts, many microbusiness owners are*  
 4 *disadvantaged when competing against their larger small business*  
 5 *counterparts. Data compiled by the Department of General*  
 6 *Services shows that of the \$2.4 billion of contract dollars issued*  
 7 *by state agencies to small businesses and microbusinesses in fiscal*  
 8 *year 2008–09, microbusinesses were awarded only 37 percent, or*  
 9 *\$866 million worth of state contracting. Moreover, of the 103,371*  
 10 *contracts issued during the same timeframe, microbusinesses*  
 11 *received only 42,140, or 41 percent of the contracts issued by the*  
 12 *state.*

13 *(c) It is beneficial to the state to promote and facilitate the fullest*  
 14 *possible participation by California workers to train for new jobs*  
 15 *and careers in today's global economy.*

16 *(d) Therefore, it is essential to ensure that a fair proportion of*  
 17 *the total purchases and contracts or subcontracts for property and*  
 18 *services for California's high-speed rail system be placed with*  
 19 *these microbusinesses.*

20 *SEC. 2. Section 185034.1 is added to the Public Utilities Code,*  
 21 *to read:*

22 *185034.1. (a) The authority shall work with the Department*  
 23 *of General Services to identify essential components of, and adopt,*  
 24 *a small business program as part of contracts to be awarded by*  
 25 *the authority relative to the construction of the high-speed rail*  
 26 *system. The program may have separate elements for small*  
 27 *businesses, microbusinesses, and disabled veteran business*  
 28 *enterprises, as those terms are defined in subdivision (e). The*  
 29 *program shall include proper oversight of expenditure of state and*  
 30 *federal funds, contractor compliance monitoring and enforcement*  
 31 *efforts, tracking and reporting mechanisms, and prompt payment,*  
 32 *reporting, and project closeout provisions.*

33 *(b) In developing the small business program, the authority*  
 34 *shall do all of the following:*

35 *(1) Review and consider examples of existing small business*  
 36 *programs used by other public agencies in California.*

37 *(2) Establish a goal methodology to determine the appropriate*  
 38 *level of involvement of small businesses in authority contracts,*  
 39 *based on the likely nature of the work needed to be performed and*  
 40 *the likely ability of the small businesses to do that work.*

1     (3) *Provide three small business preferences, as follows:*

2     (A) *Provide a 5 percent bid preference to a responsible bid*  
3 *meeting specifications that is submitted by a small business.*

4     (B) *Provide an incentive to nonsmall business bidders that*  
5 *submit a responsible bid meeting specifications if the bid*  
6 *incorporates the participation of small businesses in the manner*  
7 *consistent with the goals set forth in the authority's program*  
8 *established pursuant to this section. A nonsmall business bidder*  
9 *shall be granted a 5 percent bid preference for meeting the goals.*

10    (C) *Grant an additional price preference or score of 2.5 percent*  
11 *of the bid amount to qualified state-certified microbusinesses that*  
12 *are local to a worksite.*

13    (4) *Establish, if determined to be desirable by the authority, a*  
14 *prequalified list of contractors for certain types of authority*  
15 *contracts, including, but not limited to, architectural and*  
16 *engineering contracts.*

17    (5) *Include a plan for outreach, including information on*  
18 *training and technical assistance that is available to assist small*  
19 *businesses in understanding and bidding on contracts to be offered*  
20 *by the authority. The authority shall specifically conduct a outreach*  
21 *campaign that contacts certified small businesses listed in the*  
22 *certification directories of the Department of General Services.*

23    (c) *The authority shall hold at least one public hearing on the*  
24 *small business goal methodology required by paragraph (2) of*  
25 *subdivision (b), and on the overall program developed pursuant*  
26 *to this section. Following the public hearing, the authority shall*  
27 *adopt the plan at a regularly scheduled meeting of the board. When*  
28 *adopting the plan, the authority shall take into consideration*  
29 *comments from the public hearing and written comments that it*  
30 *receives in that regard, and any hearings the Legislature may hold*  
31 *prior to adoption of the plan.*

32    (d) *Upon approval by the authority of the small business*  
33 *program, its provisions shall be included in the design-build*  
34 *procurement for Phase 1 and Phase 2 of the high-speed rail*  
35 *program and in the environmental, architectural, and engineering*  
36 *stage for Phase 2 of the high-speed rail program.*

37    (e) *As used in this section, the following terms have the following*  
38 *meanings:*

39    (1) *"Disabled veteran business enterprise" means an enterprise*  
40 *that has been certified as meeting the qualifications established*

1 *by subdivision (g) of Section 999 of the Military and Veterans*  
2 *Code.*

3 (2) “Microbusiness” means a microbusiness as defined in  
4 paragraph (2) of subdivision (d) of Section 14837 of the  
5 Government Code.

6 (3) “Small business” means a small business as defined in  
7 paragraph (1) of subdivision (d) of Section 14837 of the  
8 Government Code.

9 ~~SECTION 1. Section 14838.1 of the Government Code is~~  
10 ~~amended to read:~~

11 ~~14838.1. (a) In order to encourage the participation of small~~  
12 ~~businesses in the construction, alteration, demolition, repair, or~~  
13 ~~improvement, of the state’s infrastructure, as provided in the~~  
14 ~~infrastructure-related bond acts of 2006 and 2008, each state agency~~  
15 ~~awarding contracts financed with the proceeds of these bonds shall~~  
16 ~~do all of the following:~~

17 ~~(1) Establish a 25 percent small business participation goal in~~  
18 ~~all contracts financed with the proceeds of the infrastructure-related~~  
19 ~~bond acts of 2006 and 2008.~~

20 ~~(2) Advertise all upcoming opportunities to bid on contracts for~~  
21 ~~projects funded by the infrastructure-related bond acts of 2006 and~~  
22 ~~2008, described in subdivision (e), in the California State Contracts~~  
23 ~~Register and include in the advertisement an Internet link to~~  
24 ~~information for prospective bidders, including, but not limited to,~~  
25 ~~general bidding procedures and how to properly prepare a bid for~~  
26 ~~those contracts.~~

27 ~~(3) Provide information to California small businesses regarding~~  
28 ~~training and technical assistance that is available to assist these~~  
29 ~~small businesses in understanding and bidding on contracts for~~  
30 ~~projects funded by the infrastructure-related bond acts of 2006 and~~  
31 ~~2008, described in subdivision (e).~~

32 ~~(b) For purposes of this section, “small business” has the same~~  
33 ~~meaning as set forth in subdivision (d) in Section 14837.~~

34 ~~(c) For purposes of this section, all of the following measures~~  
35 ~~are deemed to be the infrastructure-related bond acts of 2006 and~~  
36 ~~2008:~~

37 ~~(1) The Highway Safety, Traffic Reduction, Air Quality, and~~  
38 ~~Port Security Bond Act of 2006 (Chapter 12.49 (commencing with~~  
39 ~~Section 8879.20) of Division 1 of the Government Code).~~

~~(2) The Housing and Emergency Shelter Trust Fund Act of 2006 (Part 12 (commencing with Section 53540) of Division 31 of the Health and Safety Code).~~

~~(3) The Kindergarten-University Public Education Facilities Bond Act of 2006 (Part 69 (commencing with Section 101000) of the Education Code).~~

~~(4) The Disaster Preparedness and Flood Prevention Bond Act of 2006 (Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the Public Resources Code).~~

~~(5) The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Division 43 (commencing with Section 75001) of the Public Resources Code).~~

~~(6) The Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code).~~

~~(d) For the purposes of this section, "state agency" includes each agency provided for in Section 12800 and each state entity included in Section 10335.7 of the Public Contract Code in which the head of the agency is appointed by the Governor. For the purposes of this section, "state agency" also includes the High-Speed Rail Authority created pursuant to Section 185020 of the Public Utilities Code.~~

~~(e) This section does not require the expenditure of the proceeds of the sale of the bonds described in this section, except as permitted by the measure authorizing the issuance of the bond.~~

~~(f) On or before August 1, 2009, and annually thereafter, each state agency that has awarded any contract financed with the proceeds of the infrastructure-related bond acts of 2006 in the previous fiscal year shall report to the Director of General Services statistics comparing the small business and microbusiness participation dollars for contracts funded by these bonds to the total contract dollars for contracts funded by these bonds. The High-Speed Rail Authority shall report, pursuant to this section, on or before August 1, 2012, and annually thereafter, with respect to the bond act described in paragraph (6) of subdivision (e). If an agency did not meet its participation goal, then the agency shall~~

- 1 ~~include in its report a plan of action to meet its participation goal~~
- 2 ~~during the current fiscal year.~~

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